

Steps and Resources for Assuming Clean Water Act Section 404 Program

Basic Steps:

Step 1) Initiate: Contact applicable EPA Regional Administrator and U.S. Army Corps of Engineers (Corps) District/Division to identify interest in assumption.

Step 2) Hold Pre-Submittal Dialogue: Confer and coordinate with EPA regional and headquarters staff on process, and substantive requirements; review existing state or tribal programs, laws, and resources and identify program modifications and/or legislation needs; conduct outreach with the public and regulated community; obtain from Corps description of waters to be retained.

Step 3) Develop and Submit Assumption Request: Submit letter from Governor or Tribal leader with Attorney General statement on legal sufficiency of proposed state/tribal permit program; describe state/tribal program; copies of all applicable state/tribal statutes and regulations; draft memorandums of agreement with applicable EPA Regional Administrator and Secretary of the Army.

Step 4) Support EPA Review and Approval: Remain engaged in conversation with the EPA regional office as EPA reviews program request package; publishes a notice of the submission for public comment; conducts federal agency review; holds a public hearing; and documents its review and decision by the EPA Regional Administrator.

Resources:

State/Tribal Assumption Regulations (40 CFR 233): Regulations specifying procedures and criteria used by the EPA in considering assumption of section 404 program

(https://www.epa.gov/sites/production/files/2015-03/documents/2004_10_21_wetlands_40cfrpart233.pdf)

Section 404(b)(1) Guidelines (40 CFR 230): Regulations that constitute substantive environmental criteria used in evaluating activities regulated under section 404 of the Clean Water Act (<https://www.epa.gov/cwa-404/section-404b1-guidelines-40-cfr-230>)

Report by Assumable Waters Subcommittee: Advisory group convened under National Advisory Council for Environmental Policy and Technology committee to provide advice and recommendations on how the EPA could clarify the waters for which a state or tribe could assume permitting responsibility under an approved Clean Water Act section 404 program (https://www.epa.gov/sites/production/files/2017-06/documents/awsubcommitteefinalreprt_05-2017_tag508_05312017_508.pdf)

Memo from U.S. Department of Army, Office of Assistant Secretary (Civil Works). July 30, 2018. Subj: Clean Water Act Section 404(g) – Non-Assumable Waters: Guidance to U.S. Army Corps of Engineers that clarifies waters assumable by a state or tribe (<https://www.army.mil/e2/c/downloads/525981.pdf>)

ASWM and ECOS 2011 Handbook: Guidance for states and tribes on assuming the 404 program (https://www.aswm.org/pdf/lib/cwa_section_404_program_assumption.pdf)